

UNITED STATES DISTRICT COURT
DISTRICT OF CONNECTICUT

NEW COLT HOLDING CORP., <i>et al.</i>	:
Plaintiffs,	:
	:
-vs-	: Civ. No. 3:02cv173 (PCD)
	:
RJG HOLDINGS OF FLORIDA, INC., <i>et al.</i> :	:
Defendants.	:
	:

RULING ON MOTION TO COMPEL

Defendant AWA International, Inc. (“AWA”) moves to compel plaintiffs’ response to two interrogatories and for sanctions pursuant to FED. R. CIV. P. 37. The motion is **denied**.

I. BACKGROUND

The complaint alleges trade dress infringement by defendants in their manufacture of revolvers. Defendants allege plaintiffs’ abandonment of their claim of infringement by failing to prosecute prior infringement on the subject revolver design and that plaintiffs’ design has become generic.

Defendant AWA served a second set of two interrogatories. The first interrogatory listed sixty-four specific revolver models and requested that plaintiffs “[f]or each of the manufacturers, sellers, and models of single action revolvers listed below, state whether each such revolver infringes Colt’s ‘trade dress,’ as set forth in the Complaint” The second interrogatory requested detail as to why each model does or does not infringe on plaintiffs’ design. Plaintiffs’ refused to respond to the interrogatories whereupon AWA filed the present motion.

II. DISCUSSION

Plaintiff objected to the interrogatories as harassing, overly broad, burdensome, over the twenty-five interrogatories allowed by FED. R. CIV. P. 33(a), lacking adequate detail to answer by providing a photograph when only exemplars would suffice, calling for a legal conclusion, seeking irrelevant information, and as seeking confidential information.

FED. R. CIV. P. 33(a) imposes a presumptive limit of twenty-five interrogatories. Although AWA argues that it served less than twenty interrogatories, the separate reference to particular models on which an opinion and explanation is required is not likely to be considered a “discrete subpart[]” as per FED. R. CIV. P. 33(a). A subpart is discrete and regarded as a separate interrogatory when it is logically or factually independent of the question posed by the basic interrogatory. *See Safeco of Am. v. Rawstron*, 181 F.R.D. 441, 444-45 (C.D. Cal. 1998); *Kendall v. GES Exposition Servs., Inc.*, 174 F.R.D. 684, 685-87 (D. Nev. 1997).

AWA’s interrogatory presents sixty-four pictures of different revolvers and asks plaintiffs to point out similarities or differences relevant to whether the separate designs infringe on plaintiffs’ design. Contrary to plaintiffs’ argument, AWA’s theory that plaintiffs’ design became generic prior to defendants’ entry into the revolver market is neither legally irrelevant, *see Nora Beverages, Inc. v. Perrier Group of Am., Inc.*, 164 F.3d 736 (2d Cir. 1998) (“[c]ompetitors are free to use an owner’s trade dress if it has become generic over time”), nor an improper request for a legal opinion, *see Stonybrook Tenants Assoc. v. Alpert*, 29 F.R.D. 165, 168 (D. Conn. 1961) (describing relevant question as “would an answer serve any substantial purpose”); *Meese v. Eaton Mfg. Co.*, 35 F.R.D. 162, 166 (N.D. Ohio 1964) (calling for opinion as to patent infringement). The nature of the information sought is thus not improper.

However, in light of the presumptive numerical limitation on interrogatories, *see* FED. R. CIV. P. 33(a), and concerns as to “discrete subparts” therein, the “subparts” involve distinct revolvers and call for individual commentary as to similarities and differences when compared to the subject revolver. They cannot be read as a single question with multiple integral subparts. Such a characterization would sanction unlimited subparts tied only by a legal theory. It would effectively eliminate any presumptive limitation on interrogatories by the use of subparts and will not be permitted.

As a question of general discovery, the questions posed by the interrogatories are legally proper. As a matter of form, AWA was not entitled to consolidate the subject matter into two interrogatories and exceeded the presumptive limit of twenty-five interrogatories in so doing. As such, defendant’s motion is denied. However, in an effort to facilitate resolution of the dispute it is suggested that the matter be resolved through the use of interrogatories as the answers sought include substantial discussion on each “subpart”. The matter could be resolved through a single deposition of one of plaintiffs’ subject matter experts after reaching an agreement as to whether pictures or exemplars will be presented and after identification of the specific manufacturers and models for which a response will be sought from the expert. Whether such is the most appropriate course of action is left to the discretion of the parties. Absent such a resolution, AWA will be permitted to move for permission to file over twenty-five interrogatories, in the usual form, referring to the interrogatories on file, without refileing the same, all in compliance with the Supplemental Order.

III. CONCLUSION

Plaintiff’s motion to compel and for costs (Doc. 75) is **denied**.

SO ORDERED.

Dated at New Haven, Connecticut, February ___, 2003.

Peter C. Dorsey
United States District Judge